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Portland, 14 Or. 243, it was decided that in no event can the officer de jure maintain an action to recover his salary while the office is in the possession of an officer de facto, where the latter's right to the office has not been determined by an action brought expressly for that purpose. And the Supreme Court of New Jersey goes a step further in *Stuhr v. Curran*, 44 N. J. L. 181, holding that the officer de jure cannot recover from the officer de facto, the salary received by him while in the discharge of the duties of his office, and in the belief that he was entitled to the office and its emoluments. But the principal case borders on the line of reasoning in those courts which hold that since the de jure officer may recover from the de facto officer fees or salary actually collected by him, and from the city or county for emoluments not yet paid to the de facto officer, therefore these rights are *not* dependent on *performance* of the *duties*, but upon his *title* to the office. Such courts claim that this is in harmony with judicial principles, and payment to the de facto officer does not impair the right of the de jure officer to recover the salary from the city, county, or any public body charged with the duty of making its payments. But the courts which follow this rule are in the minority.

TAXATION—NATIONAL BANK SHARES—DISCRIMINATION.—Sections 3609 and 3610 of the Political Code of California provide that the stockholders in every national banking association doing business in that state and having its principal place of business therein "shall be assessed and taxed on the value of their shares of stock therein," the same to be "valued and assessed as is other property for taxation." Section 1 of Article 13 of the constitution of California, adopted in 1879, provides that, "All property in the state not exempt under the laws of the United States shall be taxed in proportion to its value, to be ascertained as provided by law." The word "property" as used in this article is declared to include moneys, credits, bonds, stocks, dues, franchises, and all other things capable of private ownership. An act of 1881 (Amendments to Codes, 1881, p. 56, c. 53) provided that "all property belonging to corporations shall be assessed and taxed, but no assessment shall be made of shares of stock, nor shall any holder thereof be taxed therefor." This section was amended in 1899 by excepting from its operation national banking associations. Under §§ 3609 and 3610 of the Political Code shares of stock in a certain national bank were assessed for taxation. In a proceeding instituted by the owner of the shares to have it adjudged that the assessment and taxation of said shares were illegal and void under § 5219, Revised Statutes of the United States, the Supreme Court of California *held* (McFARLAND, J., dissenting) that all the elements of value which are embraced in the assessment of shares of stock in national banks are included in assessing the value of property of state banks and other moneyed corporations and that, therefore, there is no discrimination against the shares of national banks. *Crocker v. Scott, Tax Collector* (1906), — Cal. —, 87 Pac. Rep. 102.

In a recent case the Supreme Court of the United States came to a different conclusion on virtually the same statement of facts. *San Francisco National Bank v. Dodge* (1905), 197 U. S. 70, 25 Sup. Ct. 384, 49 L. ed. 669. In that

case, after reviewing the statutes and decisions of the state, the court held that the method of taxing national bank shares adopted by the state of California, produced a discrimination prohibited by act of Congress. In the principal case the court holds that the constitutional and statutory provisions providing for the assessment of "all property" requires the assessment and taxation of all the elements tangible and intangible that go to make up the value of shares. To demonstrate that the provisions referred to have been uniformly so interpreted the court cites, *Burke v. Badlam*, 57 Cal. 594; *Spring Valley W. W. v. Schottler*, 62 Cal. 69; *McHenry v. Downer*, 116 Cal. 20, 47 Pac. 779, 45 L. R. A. 737; *Bank of California v. San Francisco*, 142 Cal. 276, 75 Pac. 832, 64 L. R. A. 918, 100 Am. St. Rep. 130. No conflict necessarily arises between the act of Congress and the state law solely because the latter provides one method for taxing state banks and another method for taxing national bank shares. *Nevada National Bank v. Dodge*, 119 Fed. Rep. 57; *Davenport Bank v. Davenport Board of Equalization*, 123 U. S. 83, 31 L. ed. 94, 8 Sup. Ct. Rep. 73. Discrimination by state's taxing officers as well as by state law is prohibited. *Pelton v. National Bank*, 101 U. S. 143, 25 L. ed. 901; *Cummings v. National Bank*, 101 U. S. 153, 25 L. ed. 903.

WILLS—CONSTRUCTION—SUCCESSION ON DEATH OF LEGATEE BEFORE PAYMENT.—Testator's will contained the following provisions: 1. That my executors sell, convey and dispose of the same at public or private sale at such times and on such terms as they may think proper. 4. That in the event of the death of any child "before conveyance and payment to him of his share of my estate herein given" the executors should pay the share of the one so dying to his or her issue absolutely. The sale of the land in Virginia was made by the executors in good faith and season, but before made the testator's son died and this contest is between his personal representatives and his daughter. *Held*, that the son took a contingent interest, i. e., subject to the sale, that he died before sale and the property belonged to the daughter. *March et al. v. March et al.* (1906), — N. Y. —, 78 N. E. Rep. 704.

CULLEN, C. J. filed a strong dissenting opinion, and WERNER and HISCOCK, JJ., concur with him. It was contended that a literal construction should not be placed on the clause "before conveyance and payment." This contention is in accord with the English view expressed by Lord Thurston, quoted in *Hutchin v. Mannington*, 1 Ves. 366, elaborated in *McKinstry v. Sanders*, 2 Thomp. & C. 181, which was affirmed by the New York Supreme Court. The second contention is that there was an equitable conversion of the real estate into personal property and this took place at the time of testator's death. This contention is supported by *Loftis v. Glass*, 15 Ark. 680; *Rumsey v. Durham*, 5 Ind. 71; *Loughborough v. Loughborough*, 14 B. Mon. 549; *Reiff v. Strite*, 54 Md. 298; *Perkins v. Coughlin*, 148 Mass. 30; *Compton v. McMahan*, 19 Mo. App. 494; *Snover v. Squire* (1892), 24 Atl. (N. J.) 365; *Benbow v. Moore*, 114 N. C. 263; *Howell v. Mellon*, 189 Pa. St. 169; *Holder Petition*, 21 R. I. 48; *Wayne v. Fonts*, 108 Tenn. 145; *Becker v. Chester*, 115 Misc. 90; *Horton v. McCoy*, 47 N. Y. 21; *Fisher v. Bonta*, 63 N. Y. 468, are in